

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANFORD S. WADLER,
Plaintiff,

v.

BIO-RAD LABORATORIES, INC., et al.,
Defendants.

Case No. 15-cv-02356-JCS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
RULE 50 MOTION AND DENYING
DEFENDANTS' RULE 50 MOTION**

Docket Nos. 207, 209

Presently before the Court are motions for judgment as a matter of law pursuant to Rule 50(a) of the Federal Rules of Civil Procedure. Plaintiff's Rule 50 motion was made orally in open Court at the close of Defendants' case and seeks entry of judgment as a matter of law as to liability in the entire case. Plaintiff also filed a written request for judgment as a matter of law under Rule 50(a) as to Defendants' mitigation of damages defense. *See* Docket No. 207. Defendants have filed a written Rule 50(a) motion that seeks entry of judgment as a matter of law in its favor with respect to all of the claims and defenses in the case and on both compensatory and punitive damages. *See* Docket No. 209.

The Court GRANTS Plaintiff's Rule 50(a) motion as to Defendants' mitigation of damages defense. To prevail on this defense, Defendants must prove, by the preponderance of the evidence, both that Mr. Wadler did not use reasonable diligence in seeking employment after Bio-Rad terminated him *and* that there were substantially equivalent jobs available that Mr. Wadler could have obtained. *See Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1497 (9th Cir. 1995). Defendants failed to present any evidence at trial from which a jury could reasonably conclude that the second requirement was met. Defendants also presented no evidence that would allow the jury to make a reasonable determination as to the amount of money Mr. Wadler could have earned

1 if he had obtained alternative employment. Accordingly, the Court enters judgment in favor of
2 Plaintiff with respect Defendants' mitigation defense.

3 The Court DENIES the parties' Rule 50 motions in all other respects.

4 **IT IS SO ORDERED.**

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6 Dated: February 3, 2017

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9 JOSEPH C. SPERO
Chief Magistrate Judge